REMARKS

A Notice of Appeal was filed in the present application on March 27, 2007, appealing the Examiner's final rejection of claims 1 – 27 mailed December 27, 2006. An Appeal Brief was subsequently submitted pursuant to 37 CFR § 41.37 on June 27, 2007. The Examiner's Answer was mailed on October 3, 2007. The Board of Patent Appeals and Interferences mailed a Docketing Notice on September 4, 2008 that indicated the application had been assigned Appeal No. 2008-5538. The Examiner mailed a second Examiner's Answer on December 9, 2008, including a new ground of rejection in which the Examiner rejected claims 14 – 17 and 27 under 35 USC § 101 as directed to non-statutory matter. Although not specifically referencing the *In re Bilski* decision of the Court of Appeals for the Federal Circuit (CAFC) decided October 30, 2008, the Examiner applied the *Bilski* "machine or transformation" exclusive test for process claims citing the Supreme Court precedent that the CAFC relied upon in deciding *Bilski*. Applicants now request reopening of prosecution pursuant to 37 CFR § 41.39 (b)(2) to respond to the new ground of rejection, understanding that this request will be treated as a request to withdraw the appeal.

In the new ground of rejection, the Examiner rejected claims 14 – 17 and 27 under 35 § USC 101 as directed to non-statutory subject matter. The Examiner stated that "based on Supreme Court precedent, a method claim must (1) be tied to another statutory class of invention (such as a particular apparatus) or (2) transform underlying subject matter (such an article or materials) to a different state or thing" (citations omitted). The Examiner further stated that claims 14 – 17 and 27 fail to meet the above requirements since there is not a sufficient tie to another statutory class. Applicants traverse this rejection.

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Unlike the claims in *Bilski,* claims 14 – 17 and 27 can only be performed using computer-implemented processing. Thus, the use of computers and communications networks is implicit in these claims, although not explicitly recited. For example, at least one of the steps of the method must be performed *automatically* such as the final step of automatically pushing flight status change notification information to a passenger when the updated departure or arrival time varies from the scheduled departure or arrival time by a predetermined amount.
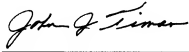
However, in order to overcome the new ground of rejection unequivocally, claim 14 has been amended to specifically recite the apparatus and communications network that perform each step of claim 14. The amendments made to independent claim 14 address the first prong of the *Bilski* "machine or transformation" test. Specifically, the first receiving step has been amended to recite that passenger reservation information including a request for automatic flight status change information is received "at a host computer via a communications network." The second receiving step has been amended to recite that scheduled departure or arrival times for a plurality of airline flights are received "at the host computer." The third receiving step has been amended to recite that updated departure or arrival times for the airline flights are received "at the host computer." A new step has been added to claim 14. This step recites "populating and storing a flight status table with the scheduled and updated departure and arrival times for the airline flights at the host computer or by a computer coupled to the host computer." Support for this step is found at least at page 7, line 15 to page 8, line 6, and Fig. 2. The flight status table is updated in real-time (page 4, ll. 6 – 11). The computer coupled to the host computer is a particular machine that performs a scheduling function, or a gateway computer (Fig. 1, ref. nos. 14, 20; page 4, ll. 7 - 11). The comparing step has been amended to recite that the comparing

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between scheduled and updated departure and arrival times is performed using "the flight status table by the host computer." The host computer compares the scheduled and updated times in the flight status table and flags records when the new time varies by a predetermined amount (page 8, ll. 7 – 11). The final step of automatically pushing flight status change notification information has been amended to recite that the information is pushed "electronically from the host computer to a preferred notification device." The passenger may provide his preferred communication device when making a flight reservation and requesting automatic notification of flight status changes (page 8, ll. 8 – 15). Claim 27 has been amended to correct the class of claim recited from program product to method.

In view of the preceding remarks, it is respectfully submitted that that each step recited in claim 14 is tied to another statutory class (a particular apparatus) and that the rejection of claims 14 – 17 and 27 under 35 USC § 101 has been overcome. It is also requested that the Examiner contact Applicant's representative at the telephone number listed below should this response not be deemed sufficient to overcome the new ground of rejection under 35 USC § 101.

Respectfully submitted,

2/9/09
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